

SC to look into plea against law on Muslim inheritance

Top court says striking down provisions in Shariat Act could create vacuum in Muslim inheritance framework; says it would be better to defer to Parliament's wisdom to bring a Uniform Civil Code

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The Supreme Court on Tuesday orally observed that it would be better to defer to Parliament's wisdom to bring a Uniform Civil Code rather than judicially strike down provisions in the Shariat Application Act, 1937, on the ground of discrimination for giving Muslim women a smaller share of family inheritance compared with their male counterparts.

The law established Islamic law for inheritance among Muslims, providing widows with children a one-eighth share, or a further reduced one-fourth share if they do not have children, and daughters half of a son's share.

Appearing before a Bench comprising Chief Justice Surya Kant and, Justices R. Mahadevan and Joymalya Bagchi, advocate Prashant Bhushan, appearing for petitioner Poulomi Pavini Shukla, challenged what he called "artificial discrimination" between

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JUSTICE JOYMALYA BAGCHI
SC Judge



Muslim women and men regarding their right to inheritance.

The Bench, however, posed a practical question of law, asking which law would govern Muslim inheritance if the Shariat Act were struck down.

Mr. Bhushan responded that the more secular Indian Succession Act could apply. He referred to the landmark judgment in *Mary Roy vs State of Kerala*, in which the petitioner successfully fought for equal inheritance rights for Syrian Christian women in the State, nullifying the discriminatory Travancore Christian Succession Act, 1916. "Does the Indian Suc-

cession Act apply to Muslim women? Remember, when you strike an Act, you create a vacuum... In our over-anxiety for reforms, we may deprive them [Muslim women] of whatever they are getting now," the Chief Justice said.

Justice Bagchi asked whether it would be wiser to defer to Parliament's wisdom to realise the aspiration expressed in Article 44 of the Directive Principles of State Policy (DPSP) of the Constitution, which says that the state shall endeavour to secure for citizens a Uniform Civil Code across the country.

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about inheritance. But the basic equality of a one man-one woman relationship, a monogamous existence, has it been realised throughout the country? No. Can we declare all bigamous relationships bound by personal law as *ultra vires* Article 14 of the Constitution? We have to defer to the wisdom of the legislature to bring the DPSP into reality," Justice Bagchi observed.

Mr. Bhushan urged the three-judge Bench to refer the case to a Constitution Bench. He said the court had earlier not hesitated to strike down triple *talaq*, which involved a more religious issue. "Inheritance is a civil right," he submitted.

The Chief Justice asked whether he was suggesting that the court strike down the Shariat Act and effectively re-legislate. Mr. Bhushan said the top court could either bring Muslim women under the Indian Succession Act or declare that the Shariat Act provisions on inheritance violated Article 14. The court agreed to list the case.